

CITY OF AUBURN, KENTUCKY
ORDINANCE NO. 2015-01

ORDINANCE ANNEXING PROPERTY BY CONSENT

ORDINANCE ANNEXING 195.98 ACRES WHICH ACREAGE INCLUDES 83.15 ACRES OWNED BY CHAMPION PET FOODS USA INC., ALONG US HIGHWAY 68-80 IN AUBURN, KENTUCKY AND SAID TERRITORY BEING CONTIGUOUS TO EXISTING CITY LIMITS;

WHEREAS, pursuant to KRS 81A.412, the City of Auburn may annex any area which meets the requirements for annexation if the owner of record of the land to be annexed gives prior consent in writing; and

WHEREAS, the Commonwealth of Kentucky acting through its Chief District Engineer has requested and consented in writing to the annexation of 112.83 acres located adjacent to the City of Auburn, Kentucky as described in the attachment to this Ordinance; and

WHEREAS, Champion Petfoods USA, Inc., acting by and through its duly authorized Agent has requested and consented in writing to the annexation of 83.15 acres, said property being contiguous to the property owned by the Commonwealth of Kentucky as described in the attachment to this Ordinance; and

WHEREAS, the City of Auburn hereby declares its desire to annex this property as described in the attachments to this Ordinance; and

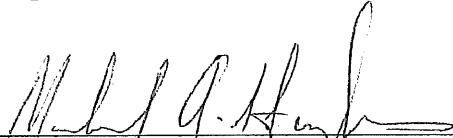
WHEREAS, the proposed property to be annexed is adjacent or contiguous to the City and the property is urban in character and suitable for development without unreasonable delay;

NOW THEREFORE be it ordained by the City Council of the City of Auburn, Kentucky pursuant to KRS 81A.412 as follows:


1. The property located along US 68-80 identified by the attached description to this Ordinance containing 112.83 acres presently owned by the Commonwealth of Kentucky and the 83.15 acres presently owned by Champion Petfoods USA, Inc., all of which is contiguous to existing City limits shall be and is hereby annexed into the City of Auburn, Kentucky by consent of the owners and the boundaries of the City are hereby extended so as to include and incorporate all of this real estate into the City of Auburn, Kentucky.
2. A copy of this Ordinance shall be forwarded to the appropriate authorities and they are hereby authorized and directed to make the necessary changes to the territorial limits of the City in order to reflect this annexation.

3. The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.
4. All prior Municipal Orders or Ordinances in conflict herewith are hereby repealed.
5. The property annexed hereby shall be zoned Industrial.
6. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced and given first reading February 5, 2015 and given second reading on February 9, 2015 and said Ordinance shall be in full force and effect upon signature recordation and publication in summary form pursuant to KRS Chapter 424.

APPROVED:

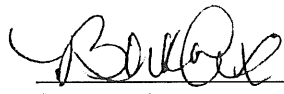

Mike Hughes, Mayor, City of Auburn

ATTEST:


Becca Cox, City Clerk

I, Becca Cox, City Clerk of the City of Auburn, KY hereby certify that the foregoing is a true and accurate copy of City Ordinance 2015-01 of the City of Auburn, KY passed February 5, 2015, effective February 10, 2015, and that I am the custodian of the original, which is maintained at 103 E. Main Street, Auburn, KY 42206.

February 24, 2015
(date)

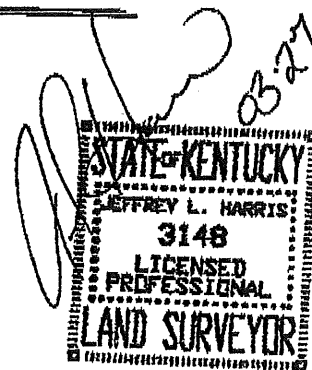

(signature)

BENCHMARK

LAND SURVEYING

APRIL 25, 2014

ANNEXATION DESCRIPTION
195.98 ACRES



UNLESS STATED OTHERWISE, ANY MONUMENT REFERRED TO HEREIN AS A "SET IRON PIN" IS A 5/8" DIAMETER STEEL REINFORCING BAR, EIGHTEEN INCHES IN LENGTH WITH A PLASTIC CAP STAMPED "J.L. HARRIS -P.L.S. 3148". ALL BEARINGS STATED HEREIN ARE REFERRED TO KENTUCKY DEPARTMENT OF HIGHWAYS PROJECT SSP 071 0068 018-023.

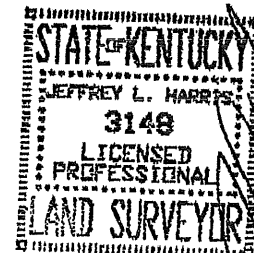
BEGINNING AT A POINT IN THE NORTH RIGHT-OF-WAY OF U. S. HIGHWAY 68-80, SAID POINT BEING LOCATED 144.81 FEET LEFT OF HIGHWAY MAINLINE STATION 566+45.38 AND HAVING COORDINATES OF (NORTHING: 1835737.066, EASTING: 1352417.147 STATE PLANE KENTUCKY SOUTH 83 - US FEET); THENCE WITH SAID RIGHT-OF-WAY N 38°30'54" E 56.26 FEET; THENCE N 45°30'05" E 359.11 FEET; THENCE N 51°15'50" E 666.39 FEET; THENCE N 57°37'26" E 481.45 FEET; THENCE N 62°58'15" E 746.28 FEET; THENCE N 68°53'53" E 613.23 FEET; THENCE N 76°11'23" E 439.35 FEET; THENCE N 70°44'40" E 94.17 FEET; THENCE N 80°11'35" E 590.67 FEET; THENCE N 85°20'05" E 459.70 FEET; THENCE N 88°56'51" E 436.30 FEET; THENCE S 87°01'02" E 721.65 FEET; THENCE N 88°51'52" E 537.37 FEET; THENCE S 85°55'32" E 186.47 FEET; THENCE N 89°14'15" E 1302.41 FEET; THENCE S 85°28'52" E 404.26 FEET; THENCE S 86°36'02" E 672.09 FEET; THENCE N 86°59'36" E 400.98 FEET; THENCE S 87°29'43" E 950.33 FEET; THENCE N 89°22'28" E 600.24 FEET; THENCE S 88°32'39" E 250.01 FEET; THENCE N 87°25'16" E 400.78 FEET; THENCE S 88°29'53" E 567.69 FEET; THENCE N 86°17'14" E 121.75 FEET; THENCE S 85°55'19" E 530.06 FEET; THENCE N 83°46'40" E 508.79 FEET; THENCE N 75°21'48" E 387.39 FEET; THENCE N 71°34'47" E 387.03 FEET; THENCE N 61°57'08" E 706.76 FEET; THENCE N 49°40'25" E 133.94 FEET; THENCE N 55°22'16" E 477.62 FEET; THENCE N 86°20'06" E 87.46 FEET; THENCE N 56°48'19" E 200.06 FEET; THENCE N 48°14'53" E 201.56 FEET; THENCE N 53°42'30" E 302.88 FEET; THENCE N 55°56'55" E 202.18 FEET; THENCE N 69°56'58" E 563.35 FEET; THENCE N 73°41'07" E 673.74 FEET; THENCE N 75°53'02" E 591.18 FEET; THENCE N 67°44'31" E 1095.30 FEET; THENCE N 67°54'22" E 830.29 FEET; THENCE N 63°29'58" E 139.67 FEET; THENCE TURNING RIGHT CROSSING SAID HIGHWAY S 26°30'02" E 240.11 FEET TO A POINT IN SOUTH RIGHT-OF-WAY OF U. S. HIGHWAY 68-80, SAID POINT BEING LOCATED 125.00 RIGHT OF HIGHWAY STATION 85+75.00 AND HAVING COORDINATES OF (NORTHING: 1840015.233 EASTING: 1371450.950 STATE PLANE KENTUCKY SOUTH 83 - US FEET), CORNER TO WOODWARD (DEED BOOK 367 PAGE 091); THENCE TURNING LEFT LEAVING SAID RIGHT-OF-WAY WITH THE LINE OF WOODWARD AS SURVEYED BY ARNOLD CONSULTING ENGINEERING DATED MARCH 26, 2014 N 66°52'04" E 129.09 FEET; THENCE TURNING RIGHT S 04°40'11" W 924.90 FEET; THENCE S 05°03'11" W 280.63 FEET; THENCE S 08°04'11" W 175.56 FEET; THENCE S 05°39'49" E 610.91 FEET; THENCE TURNING RIGHT S 70°54'11" W 1563.45 FEET; THENCE TURNING RIGHT N 08°33'49" W 308.00 FEET; THENCE N 42°01'20" W 1026.98 FEET; THENCE N 26°39'49" W 141.03 FEET; THENCE N 24°02'49" W 95.81 FEET; THENCE N 05°46'49" W 277.91 FEET TO A POINT IN THE SOUTH RIGHT-OF-WAY OF U. S. HIGHWAY 68-80; THENCE TURNING LEFT WITH SAID RIGHT-OF-WAY S 74°06'51" W 1078.27 FEET;

361 HOPKINSVILLE ROAD
RUSSELLVILLE, KENTUCKY 42276
TEL: (270) 726-4884
FAX: (270) 726-4885

THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1529.06 FEET, AN ARC LENGTH OF 523.03 FEET AND A CHORD DISTANCE OF 520.48 FEET BEARING S 64°45'02" W; THENCE S 55°21'55" W 1382.72 FEET; THENCE S 55°21'48" W 125.19 FEET; THENCE S 55°21'48" W 157.34 FEET; THENCE S 63°27'50" W 404.81 FEET; THENCE S 71°11'23" W 112.66 FEET; THENCE S 71°11'23" W 479.95 FEET; THENCE S 78°26'40" W 175.52 FEET; THENCE S 82°12'08" W 426.37 FEET; THENCE S 86°45'18" W 811.01 FEET; THENCE S 86°42'49" W 133.87 FEET; THENCE N 85°51'07" W 545.83 FEET; THENCE N 89°40'36" W 850.06 FEET; THENCE N 85°49'22" W 450.69 FEET; THENCE S 88°16'16" W 525.59 FEET; THENCE N 87°53'22" W 725.14 FEET; THENCE S 89°44'01" W 1050.26 FEET; THENCE N 87°26'40" W 1400.52 FEET; THENCE S 53°57'21" W 47.76 FEET; THENCE S 84°02'46" W 125.80 FEET; THENCE N 87°10'59" W 787.40 FEET; THENCE N 89°48'43" W 941.60 FEET; THENCE S 86°59'05" W 540.05 FEET; THENCE S 76°14'43" W 388.69 FEET; THENCE S 75°58'20" W 205.21 FEET; THENCE S 78°42'02" W 290.35 FEET; THENCE S 66°23'37" W 931.28 FEET; THENCE S 61°04'14" W 420.93 FEET; THENCE S 56°03'41" W 460.00 FEET; THENCE S 51°35'09" W 685.51 FEET; THENCE S 45°10'05" W 469.71 FEET; THENCE N 20°39'36" W 280.14 TO THE POINT OF BEGINNING. DESCRIBED PARCEL CONTAINING 195.98 ACRES.

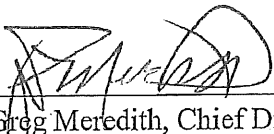
DESCRIPTION DERIVED FROM KENTUCKY HIGHWAY PLANS AND THE WOODWARD SURVEY BY ARNOLD CONSULTING ENGINEERING.

THIS IS NOT A BOUNDARY SURVEY DESCRIPTION.



CONSENT TO ANNEXATION

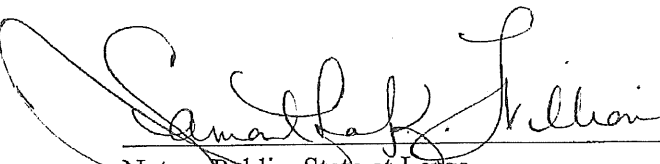
Comes Greg Meredith, Chief District Engineer, Kentucky Transportation Cabinet, Department of Highways, District Number 3, and in his official capacity as a representative for the Commonwealth of Kentucky as the owner of the right-of-way for US 68/80 in Auburn, Kentucky (see attached description) and gives consent to the annexation by the City of Auburn of the right-of-way and further acknowledges and does not object to the zoning district classification that will be effective upon the property through the annexation process. By consenting to the annexation, the Commonwealth of Kentucky understands and agrees to waive their objection to the annexation, waive any notice required to file an objection and waive any waiting period.



Greg Meredith, Chief District Engineer

STATE OF KENTUCKY)
)SS
COUNTY OF WARREN)

The foregoing instrument was acknowledged before me this the 10th day of April, 2014 by Greg Meredith in his official capacity as Chief District Engineer for the Kentucky Transportation Cabinet, Department of Highways, an agency of the Commonwealth of Kentucky.



Notary Public, State at Large
Commission Expires: Sept. 11, 2016

CONSENT TO ANNEXATION – MEMORANDUM OF AGREEMENT

THIS CONSENT TO ANNEXATION – MEMORANDUM OF AGREEMENT (hereinafter “Agreement”) is made and entered into the 3rd day of February, 2015 by and between **CITY OF AUBURN, KENTUCKY**, P.O. Box 465, Auburn, Kentucky 42206, (hereinafter “City”) and **CHAMPION PETFOODS USA, INC.**, 11403 186 Street, Edmonton, Alberta, Canada T5S 2W6 (hereinafter “Champion”).

WHEREAS, Champion owns certain real property that is located in an unincorporated area of Logan County, Kentucky and immediately adjacent to property that is located within the boundaries of the City (“Property”); and

WHEREAS, the social and economic well-being of the City is directly related to the continuity of municipal services such as police, fire, sewer, water and other utilities; and

WHEREAS, the Owner and the City each mutually wish to have the property annexed into the City to utilize and benefit from various municipal services; and

WHEREAS, as an incentive to Champion to incorporate the Property into the City through consensual annexation, the City has developed an annexation incentive program which will give certain consideration to the owner for consenting to annexation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, City and Champion agree as follows:

1. Champion hereby requests, and consents to, the annexation of the Property, consisting of approximately 84 acres +/- and more particularly described in the attached Deed, which said description is incorporated herein by reference and subject to confirmation by City on a final plat, into the City and further acknowledges and agrees that by executing this Agreement, Champion knowingly and voluntarily waives those rights otherwise afforded by KRS 81A.420 and 81A.425, as permitted in KRS 81A.412. Champion further agrees to: (a) support all necessary annexation ordinances proposed to the Auburn Board of Commissioners for adoption, pursuant to KRS 81A.412 and (b) execute any and all documents needed to complete the annexation process in accordance with the terms contained herein; and (c) consent to any and all utility easements necessary to allow the City to take over maintenance of the existing public utilities, if any, currently maintained by the City of Auburn.

2. In consideration of the consensual annexation of the Property, and upon formal approval of the annexation ordinance by City’s Board of Commissioners, City hereby agrees to the following:

- a. City, at City’s sole cost and expense, will construct a sewer line and lift station to connect the pre-treatment facilities on the Property to City’s wastewater facility sufficient to properly handle 85,000 gallons of wastewater per day. The entire cost of the sewer line and lift station, to include but not be limited to design, engineering, construction, and management of the project will be borne by City. The sewer line and lift station will be

completed and functional on or before November 1, 2015. The City shall also, at its own cost and expense, install and operate a metering device which will be maintained and calibrated according to OEM guidelines

b. City, at City's sole cost and expense, shall prepare all plats, ordinances and other documents necessary for the completion and recording of the annexation of the Property into City;

c. For waste water services from November 1, 2015 to October 31, 2017, Champion shall pay flat amount of \$7,700.00 per month and a variable rate of \$3.80 per 1,000 gallons of waste water produced by Champion as measured by the City, assuming said waste water complies with the City of Auburn's Sewer Use Ordinance and Industrial User Permit. These rates shall be guaranteed for a term of two (2) years. Thereafter, the rate may fluctuate in the same proportion as with any customer. Champion acknowledges that it will be responsible for the City's cost of testing at the Property and for surcharges pursuant to the Sewer Use Ordinance and Industrial User Permit. Champion shall not be responsible for any other charges.

d. Champion acknowledges and agrees that its waste water discharge shall not exceed 46,000 gallons per day at a BOD level of 1000 mg/l. The City acknowledges and agrees that Champion may exceed this level if the BOD and other effluent constituents of the waste water are below the thresholds in its Industrial User Permit, provided Champion has received prior concurrence of the City, which will not be unreasonably withheld.

e. City shall provide to Champion and Property all City services available subject to the same terms and conditions as other like property within the incorporated boundaries of the City, including, but not limited to, police and fire protection, trash collection, etc.

f. The Property shall be zoned Industrial.

g. Champion shall pay real property taxes and tangible property taxes at the rate of \$0.20 per \$100.00 dollars of assessed value, which rate shall thereafter increase or decrease in the same percentage applicable to all other taxpayers within the incorporated boundaries of the City. These taxes shall become effective as and from January 1, 2016 for the 2016 calendar year. This tax rate is calculated on the assumption by both parties that Champion will make a minimum of Forty Million Dollars (\$40,000,000.00) combined real property and tangible property investment. This rate may be reviewed by the parties upon request of either party after January 1, 2017.

h. City's gross receipts tax for Champion shall be capped at \$5,000.00 per year for twenty (20) years commencing upon signing date of this memorandum of agreement.

i. The parties are not aware of any city taxes other than real property tax, tangible property tax, gross receipts tax and insurance premium tax.

j. The City and Champion agree to submit application(s) for the maximum CDBG grant available to the City and any other grants that may be available to the City to fund the costs of improvements to the City's waste water treatment system.

3. Champion's consent to annexation by City is contingent upon City's compliance with the terms and conditions of this Agreement, to take effect upon the signing of this memorandum of agreement. City's annexation of the Property shall be null and void should City fail to complete the sewer line and lift station as agreed herein, and any taxes paid by Champion shall be refunded.

4. City is preparing a new Sewer Use Ordinance to replace the existing Joint Sewer Use Ordinance. The new Sewer Use Ordinance will contain, among other items, revised limitations for characteristics of waste water and new surcharges for exceeding those limitations, with the limitations and surcharges set out on the draft Sewer Use Ordinance and Industrial User Permit as provided to Champion. Since the new limitations and surcharges are not finalized as of the execution of this Agreement, should there be any issues with City being able to handle waste water cost effectively for Champion, in Champion's discretion, Champion may, within 15 days of the final approval of the new Sewer Use Ordinance, notify City that the City's annexation of the Property is null and void, and any City taxes paid by Champion to that point shall be refunded.

5. Upon a breach of this Agreement by either party, the non-breaching party shall be entitled to all remedies at law or in equity, to include reasonable attorneys' fees.

6. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer or representative of either party hereto.

IN TESTIMONY WHEREOF witness the signatures of the parties hereto on the day and date first above written.

CITY OF AUBURN, KENTUCKY

BY: _____

Mike Hughes, Mayor

CHAMPION PETFOODS USA, INC.:

BY: _____

OVERSIZE MAP INCLUDED WITH
SUBMISSION.

To research the map, contact the
Office of Secretary of State
or the County Clerk.